



huu ay aht

ANCIENT SPIRIT, MODERN MIND

**HUU-AY-AHT FIRST NATIONS
TRIBUNAL**

TRIBUNAL APPLICATION #2022-01

BETWEEN:

Huu-ay-aht First Nations Executive Director, Connie Waddell

APPLICANT

And:

Government Member, Trevor Cootes

RESPONDENT

REASONS FOR DECISION

TRIBUNAL MEMBERS: John Rich, Chair
Andrea Pettigrew
Peter Colenbrander

DATE OF DECISION: June 22, 2022

DATE OF HEARING: June 13 – 17, 2022

PLACE OF HEARING: Port Alberni, BC

APPEARANCES: Nazeer T. Mitha, Q.C. and Katie Comley, for the Applicant,
Connie Waddell
Marcia McNeil, for the Respondent, Trevor Cootes

THE ISSUE

1. Application 2022-01 is an application by the Huu-ay-aht First Nations (“HFN”) Executive Director, Connie Waddell, pursuant to the HFN *Code of Conduct and Conflict of Interest Act* (“COCCIA”). The Executive Director seeks determination by the Tribunal as to whether the Respondent Councillor Trevor Cootes has:
 - a) engaged in conduct which amounts to an abuse of power contrary to section 12(2) of COCCIA;
 - b) engaged in conduct that amounts to sexual harassment contrary to section 12(3) of COCCIA;
 - c) failed to fulfil the HFN Oath of Office (the “Oath”) contrary to sections 4 and 33(a) of COCCIA.

(hereinafter referred to collectively as the “Conduct”).

SUMMARY

The Hearing

2. The Tribunal heard the complaint over four days during the week of June 13, 2022. Both Ms. Mio, the complainant, and Mr. Cootes, the respondent, testified. Extensive documentary evidence was also placed before the Tribunal, including emails, text messages and the investigation report, which had been commissioned by the HFN Executive Director in February 2022.

Facts

3. From the time of the Huu-ay-aht Executive Council election in 2015 to July 2021, Mr. Cootes and Ms. Mio engaged in a relationship of close friendship and mentorship.
4. Between 2015 and 2021, Mr. Cootes and Ms. Mio were associated from time to time with the Economic Development Committee and related matters, as well as engaging in frequent casual interactions. Ms. Mio frequently relied on Mr. Cootes for money when she was in difficult circumstances.
5. In the spring of 2021, Mr. Cootes was instrumental in obtaining employment for Ms. Mio with the Huu-ay-aht Group of Businesses at Anacla. Ms. Mio moved from Vancouver to Anacla to engage in that employment.
6. Subsequent to Ms. Mio’s move to Anacla, Mr. Cootes invited Ms. Mio to accompany him on a trip to Victoria, which he characterized as a business trip and a “learning experience” (the first Victoria trip). Mr. Cootes instructed Ms. Mio not to tell anyone about the first Victoria trip, and encouraged Ms. Mio to mislead her employers in that regard.

7. The parties arranged to leave from Port Alberni on the first Victoria trip and Mr. Cootes paid with his personal funds for a motel room for Ms. Mio to stay overnight prior to their departure.
8. On the first Victoria trip, Mr. Cootes arranged for their accommodation in the same hotel room, being a suite with a living room and one bedroom. They slept apart. The first Victoria trip was uneventful. The parties attended a lunch meeting and returned to Port Alberni the next day.
9. In July 2021, Mr. Cootes invited Ms. Mio on another trip to Victoria. This trip had no business purpose (the second Victoria trip). In accepting Mr. Cootes' invitation to the second Victoria trip, Ms. Mio relied on Mr. Cootes to pay all of her expenses. As with the first Victoria trip, Mr. Cootes told Ms. Mio not to advise her employers about the trip.
10. On arrival to Victoria on the second Victoria trip, Ms. Mio found that Mr. Cootes had booked them into a single room with two queen beds.
11. Subsequent to their arrival to Victoria and checking into the hotel, Mr. Cootes and Ms. Mio went to a bar where, in the course of discussion, she asked him "why am I here?", at which time Mr. Cootes touched her leg and said "he was interested in moving the relationship forward".
12. Ms. Mio expressed disgust with this sexual advance, but having no money, remained with Mr. Cootes, returning with him to Bamfield two days later.
13. Three days after the incident, Ms. Mio resigned her position with the HUU-AY-AHT Group of Businesses and moved to the Yukon Territory.
14. Once in the Yukon Territory, Ms. Mio engaged in a self-destructive lifestyle, involving using and selling drugs.
15. Subsequently, Ms. Mio regained sobriety and several months later reported the incident to the HFN Executive Director and sought counselling.

Credibility

16. The Tribunal found that Ms. Mio was a credible witness.
17. The Tribunal found Mr. Cootes to be lacking credibility, having admitted lying on numerous occasions, both in his dealings with Ms. Mio and with the investigators engaged to investigate Ms. Mio's complaints. He was evasive under cross-examination and his evidence was fundamentally self-serving.

Conclusions

18. The Tribunal concludes that the Respondent, Trevor Cootes, failed to fulfill the Huu-ay-aht Oath, contrary to COCCIA, s. 4(1)(a) and 33(a), in respect of his dealings with Kiana Mio.
19. The Tribunal concludes that the Respondent, Trevor Cootes, engaged in sexual harassment of Kiana Mio, contrary to COCCIA, s. 12(3).

Disposition

20. The Tribunal orders that:
 - (a) Mr. Cootes is disqualified from holding his position as Councillor,
 - (b) Mr. Cootes is prohibited from holding a position as a public officer for a period of five years, and
 - (c) Mr. Cootes pay a fine in the amount of \$2,000.00.

THE EVIDENCE

21. The Applicant called two witnesses: Kiana Mio, the alleged victim of the contraventions of the Act by Mr. Cootes, and counsellor Rena Johnson, who treated Ms. Mio both before and after the alleged contraventions. The Respondent, Mr. Cootes, testified on his own behalf.

Ms. Mio's Evidence

22. Ms. Mio testified that she was born in 1996 and grew up in Ladner, BC, with her parents and younger brother. Ms. Mio's mother was born into HFN, but was adopted by a Musqueam family when she was a child. Ms. Mio's father is non-Indigenous. Ms. Mio attended school in Delta, BC and the Yukon territory. Growing up, the Indigenous culture to which she was introduced was largely that of the Musqueam First Nation. She was not aware of her HFN ancestry until she was 14 years old.
23. Ms. Mio testified that she was the victim of a sexual assault when she was 12 years old, which had a serious impact on her mental well-being. She testified that as a consequence, she engaged in significant drug use, including "cocaine, ecstasy, weed, alcohol and meth". Additionally, when Ms. Mio was a teenager, her mother suffered a brain injury, which caused Ms. Mio to assume substantial obligations to care for her younger brother and her injured mother. Following her graduation from high school, Ms. Mio worked as a server in a restaurant and a deckhand on a crab boat. Somewhat later, she returned to Langara College to pursue higher education.

24. From the time of learning of her Huu-ay-aht ancestry at age 14, Ms. Mio testified that she was “excited” and eager to connect with the HFN. Her first attempt to connect with HFN was to attend Vancouver engagement sessions hosted by the HFN government.
25. Subsequently, in 2015, Ms. Mio attempted to become more involved and ran for a position on the elected Executive Council (the “Council”). She obtained signatures for her nomination by introducing herself to Huu-ay-aht citizens whom she did not know and seeking their signature for her nomination. She said her motivation for running for Council was her concern about the proposed LNG project.
26. Ms. Mio’s campaign platform was placed in evidence. The platform focused on her interest in various Indigenous issues and emphasized her interest in “discovering who I am, our culture and a burning desire to help others.”
27. As part of her campaign, she attended an All Candidates meeting and at one of those met the Respondent Trevor Cootes, who was also running in the 2015 election. Ms. Mio testified that Mr. Cootes approached her at the All Candidates meeting in Port Alberni, telling her that she had done a “good job” and complimenting her comportment. Ms. Mio also testified that during the campaign she rode from Port Alberni to Anacla with Mr. Cootes.
28. Ms. Mio was unsuccessful in her bid for election. Mr. Cootes, who was successful in his bid and had been appointed as the Chair of the Huu-ay-aht Economic Development Committee (the “Committee”), recommended to Ms. Mio that she join the Committee. On the basis of his recommendation, she filled out documents sent to her by Mr. Cootes and was subsequently officially appointed to the Committee by Council. Her role on the Committee was to share her perspective as a young Huu-ay-aht woman and provide information on property and business opportunities of interest to the Committee. Ms. Mio, who was still living in the Lower Mainland, travelled to Port Alberni for Committee meetings every three months, staying at a hotel.
29. Ms. Mio testified that she left the Committee in 2017 or 2018; however, in cross-examination she was shown her resignation letter dated November 24, 2016, and agreed she resigned at that time (Exhibit 1). She testified that at that time, she told Mr. Cootes that she was “not in a good space” and was drinking and using drugs. Ms. Mio testified that she could not fulfil her obligations in her role and was missing meetings. Mr. Cootes recommended she take “compassionate leave,” which was granted. In 2019, Ms. Mio reached out to Mr. Cootes professing an interest in returning to the Committee.

Quebec Conference

30. Ms. Mio testified that in late 2019, Mr. Cootes suggested to her in a phone call that she attend the Cando Conference, a conference to be held in Quebec respecting Indigenous business success (the “Conference”). Ms. Mio was subsequently put in touch with Nicole Otte, who emailed her several forms to confirm her attendance. There were four attendees from HFN, including Ms. Mio and Mr. Cootes. The conference was sponsored by HFN and the expenses of the four attendees were paid for by HFN. At the conference,

Ms. Mio attended various panels regarding economic development and visited the Museum of Civilization.

31. Ms. Mio testified that one evening during the conference, she went to the casino within the conference hotel to play blackjack. At the casino, she saw Mr. Cootes, who invited her to a table with him and others for drinks. During the evening, they went back and forth between inside for drinking and outside for smoking, but eventually Ms. Mio said she was tired and was going to her room. Mr. Cootes asked if he could come along, to which she agreed. Ms. Mio stated that she sat across from Mr. Cootes in the room, where they were drinking, and that at one point Mr. Cootes leaned across and kissed Ms. Mio. Ms. Mio testified that she pushed Mr. Cootes away and asked him what he was doing, at which point he left. She stated that when Mr. Cootes left, the mini bar was empty, mostly consumed by Mr. Cootes.
32. Ms. Mio testified that after the incident of the hotel room, she felt angry, upset, and concerned, but did not tell anyone about it. She did not continue her involvement with HFN affairs for a significant period of time as she did not feel comfortable doing so.

Wall Centre Meeting

33. Ms. Mio testified that she had occasional contact with Mr. Cootes in the period after the Conference. Ms. Mio recalled that in February 2020, Mr. Cootes invited her to the Salmon n' Bannock Bistro in Vancouver for a meeting with himself and other businesspeople. She recalled that shortly thereafter on the evening of February 28, 2020, Mr. Cootes invited her to the room in which he was staying at the Wall Centre in Vancouver. Ms. Mio testified that she told Mr. Cootes that she had been using drugs consistently in the three days prior, but that he pushed for her to come and she eventually agreed. She said that she brought her own cocaine to the Wall Centre and used almost all of it herself, while Mr. Cootes did one or two lines. Mr. Cootes then offered to buy more, so they went to Ladner, where they purchased additional cocaine and brought it back to the hotel. Eventually, Ms. Mio fell asleep and the next day texted her mother to get picked up. Ms. Mio said that her mother picked her up several hours after her initial text.
34. Ms. Mio testified that she had discussions with Mr. Cootes while at the Wall Centre, including the sexual assault she had suffered when she was 12 years old, her subsequent drug addiction, and her desire for a greater connection with HFN.

Rehabilitation

35. On June 4, 2020, Ms. Mio texted Mr. Cootes after several months of no contact, asking about the prospect of HFN paying for mental health treatment. Mr. Cootes made several suggestions for next steps in securing treatment, but did not follow up on these steps. Ms. Mio testified that she entered rehabilitation in June and stayed for two months. Throughout her treatment, Mr. Cootes texted her approximately once per month to see how she was doing. Ms. Mio testified that Mr. Cootes had planned to visit her in rehabilitation but was barred from doing so because of the pandemic.

HGB Employment

36. Ms. Mio testified that subsequent to the meeting at the Wall Centre, she obtained work at a vaccination clinic in Vancouver.
37. In April 2021, Mr. Cootes “reached out” to Ms. Mio, informing her that a candidate for an open position with the Huu-ay-aht Group of Businesses (“HGB”) would no longer be taking the job and offering her the position.
38. Ms. Mio testified that Trevor Cootes introduced her to Patrick Schmidt, CEO of HGB. Mr. Cootes email referred to Ms. Mio as “an amazing, strong HUU-ay-aht woman” (email, April 27, 2021, Exhibit 7, Tab 8H). Following a telephone interview with Mr. Schmidt and Sarah Johnson, Ms. Mio obtained the position.
39. On June 8, 2021, Ms. Mio moved to Bamfield to take up the position of Tourism Marketing Coordinator, where she reported to Sarah Johnson. She was informed by HGB that staff housing was not available at the time of her move, so she stayed in the Hacas Inn at the staff-discounted rate of \$200/month. Her job entailed creating surveys to evaluate the views of HFN citizens on potential development projects. She held her position as Tourism Marketing Coordinator until July 2021.
40. When presented with text messages from 2021 (Ex 7, Tab 4, p 7) on cross-examination, Ms. Mio admitted that she found Bamfield isolating and small.

First Victoria Trip (June 2021)

41. Ms. Mio testified that in early June 2021, Trevor Cootes contacted her to inquire whether she was interested in a “learning experience” involving a trip to Victoria. A text message from Mr. Cootes stated, “I have a couple of business meetings in Victoria, wonder you’d be interested in a learning experience” (Exhibit 7, Tab 4, p. 8, June 14, 2021). Ms. Mio responded “I’d love to” via text in response. When presented with text messages from June 2021 on cross-examination, she also recalled telling Mr. Cootes before the First Victoria Trip that she said she was looking forward to connecting in Victoria with friends she made during rehabilitation. She said she ultimately was not able to connect with them when she arrived in Victoria.
42. There were numerous text exchanges between Mr. Cootes and Ms. Mio respecting the Victoria trip (Exhibit 7, Tab 4, pp. 8-14). Ms. Mio testified that in addition to the text messages she had verbal conversations with Mr. Cootes.
43. Ms. Mio testified that she wanted to tell Patrick that she would be in Victoria but that Mr. Cootes told her she should not tell anyone that she was coming on the trip. In a text exchange on June 14, 2021, Ms. Mio asks “Should I tell Sarah and Patrick in case the [sic] need me?” and Mr. Cootes responds, “No I wouldn’t tell them you are working remotely if you need to be back earlier I can make sure I get you back in time. And they may be snoopy about who I’m meeting with and they don’t need to know”. Ms. Mio

testified that Mr. Cootes also gave her similar advice verbally. Prior to leaving, she told Mr. Cootes that she “might’ve said something to Patrick.”

44. Ms. Mio testified that she anticipated they would have separate rooms in Victoria. Prior to the trip Mr. Cootes had texted “I could get a two room if that works for you”. Ms. Mio testified that she assumed this meant they were two different rooms booked. However, when they arrived at the hotel and checked in there was only one room booked, with a bedroom area containing a bed and a living room area containing a pull-out couch. She testified she was concerned and “set a clear boundary” by asking him which room she was taking. Mr. Cootes offered to take the couch so that Ms. Mio had the bedroom.
45. Ms. Mio testified that, following the hotel check in, she went with Mr. Cootes to lunch at Glo restaurant where they met with a person who worked for the Tsawwassen First Nation. After that, Mr. Cootes went for another meeting while Ms. Mio went to the hotel gym and stayed in the room. The following day, they went back to Port Alberni, and Ms. Mio went to Anacla.

Anacla Visits

46. Ms. Mio testified that she had numerous text exchanges with Mr. Cootes on an ongoing basis. She said that he usually messaged her first but that she did reach out on occasion, including for financial assistance. Ms. Mio testified that on June 29 she met with Mr. Cootes in Anacla. They had lunch in Anacla, celebrating the HGB. Later, Mr. Cootes texted to say that he “had a great time”. Ms. Mio testified that after lunch, her and Mr. Cootes had gone for a drive to discuss her surveys. She said that Mr. Cootes asked her to accompany him on his second trip to Victoria during their drive.
47. Subsequently, Ms. Mio testified that Mr. Cootes offered to, and did in fact drive her to Sarita, 45 minutes down the Bamfield Road, to visit her Auntie Angie Jo. She said he told her he would love to be there for future visits. Ms. Mio testified that she and Mr. Cootes discussed the upcoming Victoria trip on the drive to and from Sarita. On cross-examination, Ms. Mio agreed there were several occasions in which her interactions with Mr. Cootes were public, such as the HGB celebration or the visit to her Auntie’s house.
48. Ms. Mio also testified that during this time she sought feedback from Mr. Cootes respecting her surveys, which she was preparing as part of her job with the HGB.

Second Victoria Trip (July 2021)

49. Ms. Mio testified that for the Second Victoria Trip, she did not expect to attend business meetings, contrary to what she had told investigators in February 2022. Her explanation was that she had failed to distinguish between the two Victoria trips when she spoke to the investigators. She stated that her reason for going on the second trip was her interest in getting away from her room at the Hacas Inn in Bamfield for a while, as she both lived and worked remotely there. Ms. Mio admitted on cross-examination that her texts to Mr. Cootes in the lead-up to the Second Victoria Trip suggested that the trip would not interfere with her work.

50. On July 10 and 11, 2021, Ms. Mio and Mr. Cootes exchanged numerous texts concerning the upcoming trip to Victoria. Ms. Mio texted that she only had \$20 and “was going to ask if I should just stay home”. Mr. Cootes responded “totally fine, I’ve got you”. Ms. Mio testified that she interpreted this to mean that she didn’t have to worry about paying for food and other purchases on the trip.
51. Mr. Cootes picked Ms. Mio up in Bamfield in the early afternoon of July 12 and they drove to Victoria.
52. Ms. Mio testified that in a discussion about going on the trip with Mr. Cootes, he told her that it would not be good to tell Patrick and Sarah about the trip. She said she did not tell anyone she was going to Victoria with Mr. Cootes.
53. Ms. Mio testified that when they arrived at the hotel in Victoria, Mr. Cootes checked in and Ms. Mio found that they had only one room booked, which had two beds and no separate spaces inside. She stated that she was “uncomfortable with it” but did not say anything to Mr. Cootes.
54. Ms. Mio testified that after checking in, they drank in the hotel room and sat on the patio, and then went to the Sticky Wicket bar, where they sat at a table and ordered drinks.
55. Ms. Mio stated that while at the bar she was “just having a realization about everything” and asked him “why am I here?”. She testified that Mr. Cootes then reached over, touched her leg, and said “he was interested in moving the relationship forward” (the “Sexual Advances”). She stated she freaked out after that and asked Mr. Cootes if “he’s been fucking grooming me this whole time”, to which he said “yes” but then immediately clarified that that was not what he meant.
56. Ms. Mio testified that she felt that Sexual Advances were “disgusting” as Mr. Cootes was a member of the Executive Council whom she had trusted as a mentor.
57. Following this incident, Ms. Mio testified she was visibly upset and went to the washroom. While in the washroom, she met two girls, Rachel and Shani, who noticed her emotional state and asked if she was okay. She then left the washroom with the girls and sat at their table for a “significant” period of time. She asked if she could stay with them, but they told her that they did not have a better sleeping situation. In the course of their discussion, Ms. Mio obtained Rachel’s phone number. Ms. Mio later left the bar together with Mr. Cootes and went back to the hotel.
58. Ms. Mio testified that back at the hotel, Mr. Cootes pulled out a bag of cocaine and said “look what I found”. She testified that she did “pretty much all of the cocaine”. She said Mr. Cootes was drunk and went to sleep shortly after but that she was “up all night”.
59. Ms. Mio testified that the following day, July 13, she made a breakfast order to the hotel using Skip the Dishes, which included a six-pack of Corona beer that Mr. Cootes requested for the kayaking trip that was planned for later that day. They then went for lunch at Belleville’s, a restaurant near the kayak venue, and took a two-hour kayak trip.

She testified that on the kayak trip “I was just uncomfortable and trying to survive the weekend, I didn’t fucking want to be there”. She said she tried to make the best of it, but did not have fun.

60. Ms. Mio testified that following the kayak trip, she and Mr. Cootes went to Darcy’s Pub where they had appetizers and a drink, but did not stay long and went back to the hotel. Later they went out to the Irish Times Pub.
61. Ms. Mio testified that, while at the Irish Times, Mr. Cootes had at least three beers and she had “multiple Moscow mules” and it was her understanding that Mr. Cootes would be footing the bill, as he had paid all of the bills on the trip.
62. Ms. Mio testified that she texted the girls from the previous night to join her and Mr. Cootes. On cross-examination, Ms. Mio admitted that she had not provided to the investigators a text exchange with one of the girls, Rachel, in which she told Rachel she was “so hung”. When the girls arrived, they moved to a table. She said that she and the girls were back and forth between the table and the washroom, but not speaking to Mr. Cootes when at the table. She said that he was very angry, and she and the girls came out of the washroom at one point to find that he had left without paying the bill and with two full beers that he had ordered still on the table.
63. Ms. Mio testified that she could not leave the Irish Times because of the \$200 bar bill, but was able to text her friend George, who electronically transferred \$200 to her. Despite receiving a confirmation of the transfer, she testified that the money would not settle in her account. She said that the bartender was prepared to allow her to leave without paying if she left her ID. Upon agreeing to this and leaving, she received a notification that the money had settled in her account, which enabled her to return to the Irish Times and pay the bill. She then went out with her friends for a half hour at another restaurant before returning to the hotel.
64. Ms. Mio testified that on the following day, July 14, both she and Mr. Cootes got up early. She confronted Mr. Cootes about leaving her at the Irish Times without paying and “he flipped out”, blaming her. They then got in the car, and she said he was “driving 90km per hour through Victoria”. He pulled over at a gas station and withdrew \$200 cash from an ATM, which he “threw in her purse”. She stated she was “scared to say anything” on the trip back, as no one knew she was on the trip and they were outside of cell service. She said “he knew that”.
65. On the evening of July 14, after Ms. Mio was back in Bamfield, Mr. Cootes texted “hey, I’m really sorry I fucked up” (Exhibit 7, Tab 15, p. 24). Approximately one week later, he messaged on Instagram apologizing for walking out and not paying the bill, and expressing surprise that the bartender did not stop him.

After Victoria Trips

66. Ms. Mio testified that the day after Second Victoria Trip with Mr. Cootes, she spent a day returning to Victoria to pick up some friends, an arrangement which had been made previously.
67. Ms. Mio testified that when she came back to Bamfield on July 16, she immediately contacted her boss, Sarah, and said that she had a job in the Yukon and was leaving her position with the HGB. Ms. Mio clarified during her testimony that she did not in fact have a position in the Yukon but that she did travel there after submitting her resignation. She testified that she stayed through the month of August 2021, during which she took various drugs and sold crack and cocaine, engaging in very self-destructive behaviour. She said she recalls feeling like she had a mission to die somewhere that her parents could not find her. After a month, Ms. Mio testified that she realized she needed to come home and get better.

Disclosure

68. Ms. Mio testified she did not tell anyone about the Sexual Advances until December 2021, at which time she shared the details with her friend Becky. On Becky's advice, Ms. Mio reached out to Chief Councillor Robert Dennis to speak about the Sexual Advances. Chief Dennis advised Ms. Mio to contact Executive Director, Connie Waddell.
69. Ms. Mio testified that she was never interested in Mr. Cootes in an intimate way. She had agreed to spend time with him because she trusted him and thought she would learn something about the work or community.
70. Subsequent to her disclosure, Ms. Mio sought counselling. In February 2022, she sought assistance from a doctor at a clinic at Langara College (Exhibit 7, Tab 7). In March and April 2022, she sought assistance from a cultural wellness worker with the Huu-ay-aht First Nation (Exhibit 7, Tab 12). In March 2022, she sought counselling from Huu-ay-aht clinical counsellor Rena Johnson, with whom she had previously received counselling in the Fall of 2020 (Exhibit 7, Tab 10).

Change in Evidence

71. Ms. Mio testified that her description of the second Victoria trip in her testimony before the Tribunal differed from what she had told the investigators previously. Her explanation was that she had mixed up the dates of the events on the trip, and she realized the incident, subject of her complaint, had occurred on the first night of the trip, rather than the second night. She explained that she realized this when reviewing text messages with the applicant's lawyer, Mr. Mitha. She stated that she was not confused about the events having taken place, but rather the timeline, which she said was hard to figure out due to her PTSD.

Counsellor Rena Johnson's Evidence

72. Counsel for the respondent objected to Rena Johnson's evidence on the basis that she was not an expert, and that her evidence consisted of prior consistent statements or "oath helping". The objection on admissibility was overruled, and the Tribunal allowed Ms. Johnson to testify. However, the Tribunal clarified that the respondent's objection would be taken into account in giving any weight to the evidence.
73. Ms. Johnson testified that she was and still is a clinical counsellor employed by HFN. She works with children and adults, offering addiction support and mental health support. Ms. Johnson testified that she first saw Ms. Mio in a patient capacity in November 2020, during which sessions were remote as Ms. Mio was not living on HFN traditional territories. She continued counselling Ms. Mio through February 2021, before pausing sessions until March 2022 due to parental leave. These sessions occurred both before and after the alleged incidents of June and July 2021.
74. Ms. Johnson testified that Ms. Mio first contacted her via a telephone call, and that Ms. Mio was only able to call her because Mr. Cootes provided Ms. Mio with her number.
75. Ms. Johnson's resume, and her notes respecting the counselling, were entered as Exhibit 7, Tab 10 and 11.
76. There were no inconsistencies between the evidence of Ms. Mio and Ms. Johnson in respect of Ms. Mio's mental state at various times.
77. Ms. Johnson testified that in their sessions between November 2020 and February 2021, Ms. Mio confided to her that Ms. Mio respected and trusted Mr. Cootes and viewed Mr. Cootes as a mentor. In their sessions after March 2022, Ms. Mio told her about the Sexual Advances as well as Ms. Mio's fear that there would be no repercussions to the incident.
78. On cross-examination, Ms. Johnson said that Ms. Mio discussed a number of other events and stressors unrelated to Mr. Cootes during their sessions, including addiction problems that predated Ms. Mio meeting Mr. Cootes. Ms. Johnson testified that in their sessions after March 2022, Ms. Mio would often break down crying and profess and increase in anxiety, difficulty sleeping, difficulty concentrating, and an increase in smoking.
79. Ms. Johnson also said on cross-examination that participation in proceedings such as the current one before the Tribunal are stressful and that stress is a common reaction to having to testify.

Mr. Cootes' Evidence

80. Mr. Cootes testified that he is 44 years old and was born and raised in Port Alberni. He said that he appreciated the chance to grow up, live, and work in his homelands. He began his working career in HFN's fisheries and forestry program, after which he moved to the Ucluelet and Tofino area and worked outside of HFN traditional territories for

several years. He subsequently accepted a position as the manager of the Pachena Bay campground.

81. He described his significant family connections, who in part encouraged him to run for election to Council in 2015. He was successful in the 2015 election, and he subsequently obtained the Economic Development portfolio on Council. On cross-examination, Mr. Cootes stated that he ran on campaign promises of being proactive and conducting himself with integrity, and that he understood integrity and honesty to be part of the Oath.
82. Mr. Cootes testified that he ran for election to Council in 2015, and that during the election campaign he met Ms. Mio. He denied Ms. Mio's claim that he had driven her from Port Alberni to Anacla in the course of the campaign.
83. Mr. Cootes testified that following the election, Ms. Mio voiced a persistent interest in participating in HFN affairs. Mr. Cootes advised her that they could connect with future opportunities.
84. Following the election, Mr. Cootes obtained the Economic Development portfolio. On cross-examination, he stated that he invited Ms. Mio to apply for an opening on the Committee, after which Ms. Mio was appointed to the Committee. Mr. Cootes stressed that the appointment of a member to the Committee was not solely his decision, but ultimately the decision of Council. He said that he later put a second name forward for membership to the Committee.
85. Mr. Cootes testified that all committee members get paid a small honorarium for their participation on the Committee.
86. Mr. Cootes testified that Ms. Mio resigned from the Committee in November 2016. He explained that Committee members are removed when they inexcusably miss four consecutive meetings. He testified that Ms. Mio had missed four consecutive meetings, but admitted on cross-examination that Ms. Mio had in fact missed two meetings and been excused for two meetings. The alternative he proposed to removal, and which she accepted, was that she resign from the Committee.
87. Mr. Cootes testified that he acknowledges his inviting Ms. Mio to Victoria was not a good decision, stating that he was unaware of how the texts leading up to the June and July meetings in Victoria "could come across". He also acknowledged that he was very angry on the morning of July 14, when he and Ms. Mio travelled back to Bamfield.
88. Mr. Cootes testified that he had never used cocaine, and that he did not use cocaine with Ms. Mio.
89. Mr. Cootes testified that there were issues with drugs in his family and that many of his relatives had overdosed in the past two years. When asked if this affected his own decisions, he stated "I haven't used drugs for quite some time".

90. On direct examination, when asked if he had breached the Oath, he testified that in terms of the allegations by Ms. Mio, this was the “hardest one for me”, but maintained his denial that he was in breach of the Oath. On cross-examination, he admitted to breaking the Oath several times through his actions with Ms. Mio.

The Investigation Process

91. Mr. Cootes testified that the allegations of Ms. Mio and the application to the Tribunal have affected his work and have resulted in a substantial decrease in income. He stated it has been a challenging time. Since February 2022, he has not held any portfolios on Council and has not received the honorarium paid to the holder of each portfolio, resulting in “quite a decrease in my pay”. He stated that he had significant difficulty with respect to information posted on the HFN website, which reported on allegations against him together with a more serious allegation against another member. He testified that he had been approached by multiple members of the public, who questioned him as if the allegations had already been made out.
92. Mr. Cootes testified that there were many materials in the final investigation report commissioned by Executive Director Waddell (the “Investigation Report”) that he had not seen, and that had not been provided to him by the investigators. During the investigation, the only text messages he said he could access were those provided by the investigators courtesy of Ms. Mio. He testified that in November 2021 he had obtained a new phone that did not contain any of his texting history. He said was only able to obtain his own version of text messages with Ms. Mio when he restored his old phone following the investigation. He stated that during the investigation interviews, the investigators sent him packages of text messages provided by Ms. Mio before or during each interview and that he would have to review them before answering questions.
93. During cross-examination, Mr. Cootes was asked about some of the statements he made to the investigators in the course of the investigation. Mr. Cootes testified that when he told investigators that he and Ms. Mio had been alone together five times after Ms. Mio’s move to Anacla in 2021, he interpreted them to be asking only for the times they were alone together in Anacla and not outside of Anacla.
94. Mr. Cootes admitted during cross-examination that once he disclosed to the investigators the two Victoria Trips, he lied by telling them that Ms. Mio did not stay in a hotel room with him during the Victoria Trips due to his fear of having breached the HFN Travel Policy. He stated that there was no extra expense due to Ms. Mio staying with him, except possibly food. He stated that neither he nor Ms. Mio consumed alcohol on the trip.
95. He also stated that his fear of having breached the HFN Travel Policy was the reason he was dishonest with the investigators about driving Ms. Mio to Victoria during the First Victoria Trip. When shown the HFN Travel Policy, Mr. Cootes could not identify where it prohibits an HFN employee from having someone in the vehicle during a work trip. He stated he understood that he did not incur any extra costs by driving Ms. Mio to Victoria. Mr. Cootes admitted that lying to the investigators about whether he drove Ms. Mio to

Victoria was contrary to his campaign promises and the Oath. He did not know why he lied about driving Ms. Mio on the First Victoria trip but was candid about driving Ms. Mio on the Second Victoria Trip.

96. Mr. Cootes said that he changed his story after seeing text messages because the texts aided his recollection. He admitted during cross-examination that without seeing any texts, he knew that various statements regarding the Second Victoria Trip that he made to investigators were false, including that he dropped off Ms. Mio immediately after arriving in Victoria, that they did not stay in the same hotel room, and that he did not see Ms. Mio between dropping her off and the kayak trip. He agreed that he misled investigators about how frequently he saw Ms. Mio.
97. Mr. Cootes stated that he wanted investigators to believe him. He agreed that he only admitted the truth when he was provided with evidence he could not overcome and until then was prepared to lie.
98. Mr. Cootes identified that the investigators wrongly concluded in the Investigation Report that he had not told anyone in his professional or personal life about the two Victoria Trips; in fact, while he hid the fact of the Victoria Trips from his professional connections, he stated in cross-examination that he told his wife about going to Victoria with Ms. Mio after the two Victoria Trips and before the complaint was made.
99. He also identified that the investigators wrongly stated in the Investigation Report that Mr. Cootes left the Irish Times without paying for anything when in fact he had paid for his two drinks.
100. Finally, he identified that the investigators incorrectly concluded that he described his relationship with Ms. Mio as purely professional and not one of friendship. On cross-examination, he agreed that it would be appropriate to describe his relationship with Ms. Mio as one of mentorship and friendship. Mr. Cootes said that during the interviews the investigators had phrased the question as implying that him and Ms. Mio were in a personal relationship, which is why he refuted this. When asked why he did not identify in his reply to the Investigation Report this and other inconsistencies, he said he did not know.

Quebec Conference

101. Mr. Cootes described his involvement in Ms. Mio being selected to attend the Conference in October 2019. Mr. Cootes stated that he was responsible for one of the four registrations to which HFN was entitled for the Conference, and put three people forward for the spot, including Ms. Mio. He stated that two of the three people could not attend, so Ms. Mio was selected.
102. Mr. Cootes testified that he and Ms. Mio did not travel together to the Conference, nor did they travel back together.

103. Mr. Cootes agreed that he and Ms. Mio were together in the “casino area” on the evening of October 29, 2019. He stated that he left the casino alone, and he thought that Ms. Mio had left prior to his own departure.
104. Mr. Cootes denied going to Ms. Mio’s room that night, denied drinking with Ms. Mio from the mini bar in either of their rooms, denied Ms. Mio’s allegation that he had kissed her. Mr. Cootes explained that alcohol ordered at the Conference venue is generally billed to the hotel room and that persons travelling on HFN business are not permitted to expense charges for liquor.
105. Mr. Cootes was shown a credit card statement for HFN’s RBC Visa card and invoices from the Hilton Hotel where he and Ms. Mio had stayed during the Conference (Exhibit 6). The hotel statements showed that Ms. Mio stayed at the hotel for three nights, and that Mr. Cootes stayed for four nights. Mr. Cootes pointed out that nothing on the statement or the invoices showed a mini bar charge. He also stated that he did not personally pay for mini bar charges.
106. At the outset of Mr. Cootes’ second day of Examination in Chief, he stated that he found interaction with the “Western system” to be stressful.
107. Mr. Cootes was shown a text message to him from Ms. Mio, October 30, 2019 (Exhibit 2, p. 1), which stated, “I wonder why all the booze and pop we drink wasn’t charged yet. Are you worried about it? If there is an issue I will pay back whatever it is needed.” Mr. Cootes stated he did not recall receiving the text and did not know what it referred to. He did recall that drinks could not be charged to HFN as an expense.

Wall Centre Meeting

108. Mr. Cootes testified that he stayed in Vancouver in February 2020 to attend an Indigenous Tourism BC Board meeting, an HFN engagement session, and a dinner at a Board member’s restaurant. Mr. Cootes saw Ms. Mio at the engagement session. Mr. Cootes said that Ms. Mio expressed an interest in the Board member’s restaurant (Salmon n’ Bannock) and Mr. Cootes invited her in response. During these events, Ms. Mio asked Mr. Cootes if he would provide her a reference letter for an application she was submitting.
109. Mr. Cootes testified that after dinner at the Salmon n’ Bannock, he went back to his hotel. He did not know Ms. Mio’s plans.
110. Mr. Cootes testified that the next morning he met with Ms. Mio close to the Wall Centre to discuss the reference letter she had requested.
111. Mr. Cootes was shown a series of text messages beginning in the early morning of February 29, 2020. He testified that he got a Facebook message and call from Ms. Mio at about 4:30 a.m. asking for a ride home. He stated they met downstairs and then Ms. Mio left in a taxi. She eventually returned to the Wall Centre and Mr. Cootes said he helped her pay for the return taxi. He said that when she arrived the second time that morning

she stayed outside for about an hour smoking. He said the “hoped you would stay” text from himself to Ms. Mio was in response to her leaving for the first time, as he thought she should stay and work out her plans together before she left. Mr. Cootes testified that he took the ferry back to Vancouver Island in the morning after Ms. Mio left for the second time.

112. Mr. Cootes did not recall Ms. Mio’s exact appearance that morning, but testified that she looked like someone who had been out all night. Mr. Cootes was adamant that he did not do cocaine and did not see Ms. Mio do cocaine during the night of February 28 or morning of February 29.
113. Mr. Cootes denied Ms. Mio’s contention that he was made aware of her struggles with addiction in February 2020, during this visit; rather, he only learned of them later that year in June 2020 when Ms. Mio reached out to him to ask whether HFN provided support. At that time, he directed Ms. Mio to Executive Director, Trudy Warner. Mr. Cootes further explained that he did not know the age at which Ms. Mio started to have struggles with addiction until the Tribunal proceedings.
114. Mr. Cootes said he was in touch with Ms. Mio during her rehab in the summer and fall of 2020. She invited him to visit her, but he could not due to the pandemic. He stated he checked in with her after rehab to make sure she had completed it, and to see where she was at.

Ms. Mio’s HGB Employment

115. Mr. Cootes testified that his connection with Ms. Mio about moving to Anacla occurred as a result of an Economic Summit meeting in February 2021. At that time, previous members of the Economic Development Committee, including Ms. Mio, were invited.
116. Mr. Cootes denied that he obtained a job for Ms. Mio in 2021. Mr. Cootes said in April 2021, Ms. Mio made it known to him that she wanted to move home and work in HFN territory. Mr. Cootes testified this contact was initiated by Ms. Mio, who was looking for opportunities to return to Anacla. He said that he and Ms. Mio had discussed her addiction issues in 2020, but Ms. Mio never shared her treatment plan and Mr. Cootes did not know of any specific addictions.
117. Mr. Cootes stated that he had frequent discussions with Mr. Schmidt in Mr. Cootes’ capacity as the holder of the Economic Development portfolio. Mr. Cootes said that Mr. Schmidt had communicated that a candidate for the position was no longer available and then Mr. Cootes forwarded information respecting Ms. Mio. Mr. Cootes was shown an email from him to Mr. Schmidt in which he stated: “I wanted to connect you with Kiana Mio, an amazing strong Huuayaht woman that wants to move home and work with HFN or HGB”. Mr. Cootes testified that other than this email, he did not do anything else to help Ms. Mio secure work in 2021. Mr. Cootes agreed during cross-examination that the strong language he used to describe Ms. Mio’s aptitudes in his email was akin to a recommendation.

118. Mr. Cootes was shown an email from him to Sheila Charles attaching Ms. Mio's email regarding her interest in returning to Anacla. He testified that other than this email, he did nothing else to help Ms. Mio secure housing. Mr. Cootes testified that he does not have the ability to secure housing for anybody and did not secure housing for Ms. Mio in 2021. He stated that Ms. Mio had secured housing in 2021 through the assistance of Mr. Schmidt and Sarah Johnson. He knew at the time that Ms. Mio would be staying at the Hackas Inn and working remotely.
119. Mr. Cootes testified that once Ms. Mio arrived in Bamfield, she and Mr. Cootes were seen together with others at various events, including an HGB kickoff, a meeting with Tommy Joe and Tommy's partner, and in the restaurant and general store. He stated that he was not trying to hide his connection and relationship with Ms. Mio and that he communicated to several of his family members that Ms. Mio would be working in Bamfield.
120. On cross-examination, Mr. Cootes stated that on June 9 he and Ms. Mio went together to look at businesses in the Bamfield area, followed by a visit to Sarita.

First Victoria Trip (June 2021)

121. Mr. Cootes testified that the purpose of his June 2021 meeting in Victoria was to meet a person from Tsawwassen regarding real estate development for housing, and to attend a dinner meeting with Tom Richey, a business development manager based in Victoria. Mr. Cootes stated he did not want the Tsawwassen meeting to be known more generally as he planned to use the information he was gathering for a Council motion, the details of which were still restricted to a tight circle. Mr. Cootes recalled that the first time he told Ms. Mio about the meeting being confidential was during the car ride to Victoria. He clarified on cross-examination that the reason he did not tell her that the meeting was confidential before the drive to Victoria was that the confidentiality was "not a big deal" in the sense of having to sign NDAs.
122. When shown a text conversation (Tab 4, p 9), Mr. Cootes recalled Ms. Mio asking him if she should tell Mr. Schmidt and Ms. Johnson about her coming on the trip, to which he told her that she should not tell them anything as they may be snoopy about who he was meeting with. On cross-examination, he also admitted to counselling her to lie to Mr. Schmidt and Ms. Johnson about who she was meeting with in case they asked, as well as approving of her suggestion as to what lie to tell. He stated that the way he dealt with this was contrary to the Oath.
123. Mr. Cootes stated he invited Ms. Mio on the First Victoria Trip because he thought Ms. Mio would provide a personal connection, because she and the person he was meeting shared a Tsawwassen background. On cross-examination, he agreed that he could have obtained clearance for Ms. Mio to accompany him on the trip, but cannot answer why he chose not to.

124. Mr. Cootes testified that the night before they were scheduled to drive to Victoria, he paid out of pocket for a hotel room for Ms. Mio in Port Alberni, where he planned to pick her up the following morning to drive to Victoria.
125. Mr. Cootes testified that after leaving Port Alberni, he and Ms. Mio went directly to the meeting with the Tsawwassen official at the Glo Restaurant in Victoria and made no stops on the way. After the meeting they checked in at the Best Western. He stated that the hotel knew there would be two people staying in the room and that he had discussed previously with Ms. Mio that there would be two rooms, which he meant as a suite with two different rooms inside. On cross-examination, he stated that he did not expressly clarify that he intended two rooms to denote a suite with two different rooms inside. He did not recall who raised the issue when they arrived of the room only having one bed, but agreed that it was “fair” to say that Ms. Mio raised it. Mr. Cootes stated that it would have been cheaper to get a room without a separate living room, but that he would have booked the same room as he did had he been going to Victoria alone.
126. Mr. Cootes said that after the lunchtime meeting at Glo, he attended a virtual meeting, during which Ms. Mio went to the gym. Mr. Cootes then did more work and met with Mr. Richey over dinner at the Boom + Batten Restaurant. After dinner, Mr. Cootes stated that he unsuccessfully attempted to track down his nephew, who was living rough in Victoria. He said he thought that Ms. Mio was communicating with friends during this time, but was unsure if she ultimately met with them.
127. Mr. Cootes said that the only thing he asked Ms. Mio to keep confidential respecting the trip was the meeting with the Tsawwassen official, because there were only three or four people that knew about it. He testified that he told Ms. Mio on the drive to Victoria about the meeting being confidential, but did not tell this to investigators because he was not specifically asked about it.

Second Victoria Trip (July 2021)

128. Mr. Cootes testified that he invited Ms. Mio on a second trip to Victoria in July, following a conversation when he had driven her to her Auntie Angie Jo’s house. He said he told Ms. Mio that he would be in Anacla for a meeting with several HGB officials the week after they visited her Auntie’s house, after which he would be going to Victoria. He testified that she expressed an interest in coming and that she had communicated feelings of “cabin fever”, now being in a small place after living in the city.
129. Prior to the Second Victoria Trip on July 11, Mr. Cootes recalled Ms. Mio telling him that she only had \$20, to which he replied “totally fine, I’ve got you”. On cross-examination, he admitted that he knew that Ms. Mio’s interpretation of the text would have been that he was offering to pay for everything.
130. Mr. Cootes said he never asked Ms. Mio to keep the July trip to Victoria a secret and was not aware of any impediments that the trip may pose to Ms. Mio’s job in Bamfield. He said he discussed the room arrangement with Ms. Mio. He said he tried to get the same room as during the June trip to Victoria but was unable to as it had been booked. Mr.

Cootes testified that before leaving Bamfield she was made aware that it would be one room with two queen beds. He also stated that the hotel knew there would be two people staying in the room and that he was given two keys.

131. Mr. Cootes stated the only plan that he and Ms. Mio had discussed for the trip was to go kayaking. Ms. Mio expressed interest in that, having told Mr. Cootes about her long-standing interest in paddling.
132. Mr. Cootes testified that they arrived in Victoria around 8:00 p.m. and that Ms. Mio wanted to go to the Sticky Wicket, which they did. He had two drinks and saw Ms. Mio order mixed drinks but does not recall how many she ordered. He stated they each paid cash for their respective drinks.
133. Mr. Cootes denied that he touched Ms. Mio's knee at the Sticky Wicket, denied that he professed to her that he wanted a relationship, and denied that she asked whether he was grooming her. He recalled that a girl came to the table, spoke to Ms. Mio briefly, and then left. He went back to the hotel and slept. He said he did not do cocaine and did not see Ms. Mio do cocaine that night.
134. Mr. Cootes testified that the next day, Ms. Mio made a breakfast order from "Skip the Dishes", which included a six-pack of beer. He said that he did not order beer, that Ms. Mio did, and that he did not take beer to the kayak trip nor drink beer on the trip.
135. Mr. Cootes stated that after breakfast he had a meeting with a representative from Malahat. He then went to lunch with Colin, his nephew, whom he was looking for during the June trip. He said they had food near the hotel at the restaurant at Days Inn. He next saw Ms. Mio when they went paddling. He stated they had food but no drinks at Darcy's Pub following the paddling trip and then went back to the hotel room.
136. Mr. Cootes testified that during the paddling trip, Ms. Mio had said she was in touch with a friend, Rachel. He said Ms. Mio told him that she and her friend were going out that evening and invited him out.
137. Mr. Cootes said that they went to the Irish Times between 9:00 p.m. and 10:00 p.m. that evening. He had two IPAs while he was there, while Ms. Mio had mixed drinks. Mr. Cootes did not order any food and does not recall any food being ordered by anyone. He stated that Ms. Mio's friends showed up roughly 30 minutes after he and Ms. Mio had arrived. He had bought one drink before Ms. Mio's friends arrived and bought the second after they arrived. He said that he, Ms. Mio, and Ms. Mio's friends all sat at a table together and that he had a brief conversation with Rachel. He said Ms. Mio and her friends were getting up from the table frequently but this did not annoy him. Subsequent to buying his second drink, Mr. Cootes paid cash for his own drinks and walked back to the hotel, as he had not been planning to stay for a long time.
138. Mr. Cootes testified that he chose not to pay for Ms. Mio's drinks because he thought the girls were hanging out together, so they were "taking care of themselves." Since he had

- been out for most of the day, Mr. Cootes understood that Ms. Mio had a key to their hotel room. He has no knowledge of how the bill at the bar got to be upwards of \$160.00.
139. When shown a text message from Ms. Mio to him at 11:46 p.m. that evening saying “I can’t fucking believe you. I am honestly shocked”, Mr. Cootes stated that he had not seen that text that evening. He also stated that he did not see any missed calls from Ms. Mio that evening and does not recall checking his call log the next morning.
 140. When shown a text message from Ms. Mio’s bank to Ms. Mio at 11:37 p.m. that evening confirming that a friend had electronically transferred money to Ms. Mio, he stated that he was unaware that Ms. Mio had reached out to someone else for money.
 141. Mr. Cootes testified that he was not aware until the following morning that Ms. Mio had reached out to someone other than him to obtain funds to pay the bar bill the night of July 13.
 142. Mr. Cootes testified that the next morning Ms. Mio was very angry about being left with the bar bill the previous night and having to get money from someone to pay it. He said they argued, but it was “all new to me”. He stated that he never agreed he was going to cover her bill. Mr. Cootes said that both he and Ms. Mio raised their voices during the argument and that Ms. Mio was very angry. He said that during the argument he was looking at the texts which Ms. Mio had sent the previous night in an attempt to understand what had happened. He said that during this argument Ms. Mio did not accuse him of making the Sexual Advances the previous night.
 143. Mr. Cootes denied any Sexual Advances as made to Ms. Mio.
 144. Mr. Cootes denied that he touched Ms. Mio’s knee.
 145. Mr. Cootes denied there was any sexual relationship between himself and Ms. Mio.
 146. Mr. Cootes denied that he had been grooming Ms. Mio.
 147. Mr. Cootes testified that on the way back from Victoria to Bamfield on July 14, he stopped on Douglas Street at an ATM and took out \$200.00, which he offered to Ms. Mio. She declined money and he put it on top of her purse. He denied driving too fast and he stated that he and Ms. Mio did not further converse during the car ride.
 148. Mr. Cootes explained that his text and Instagram messages apologizing to Ms. Mio (Exhibit 7, Tab 15) were because he understood that Ms. Mio had been in a difficult place, and for his role in the argument. On cross-examination, Mr. Cootes said that he did not believe that he had done anything wrong by leaving the Irish Times having only paid for his two drinks and was therefore not taking responsibility for leaving her with the bar bill through his apology; however, he was still genuinely apologetic for the situation that Ms. Mio had to endure and for his role in the argument. He said that the messages would have conveyed this meaning to Ms. Mio. He said his reference to his “drunk ass” was meant to be light-hearted. He also clarified that he was referencing the fact that because it

was incredibly hot during the heat wave and he was drinking a lot of water and feeling dehydrated, he became extremely tipsy after his two beers at the Irish Times.

149. Mr. Cootes testified that he has drunk alcohol about once per month for the last 20 years. He said that he had problems with alcohol while he was in university, but decided to drink less as a result of his choice to start a family.
150. Mr. Cootes stated that he has had no in-person contact with Ms. Mio since the July Victoria trip.
151. Mr. Cootes testified that he did not have an interest in Ms. Mio sexually or romantically, and that he did not pursue her. He denied that he sexually harassed Ms. Mio and denied that he had engaged in any abuse of power.
152. He agreed on cross-examination that there were numerous things with which he helped Ms. Mio since they met in 2015, such as putting her name forward and helping her obtain employment, helping her get treatment for her mental health issues, loaning her money, and taking her on trips. He denied that it was his belief that Ms. Mio should have reciprocated, and denied that this belief was the reason for Mr. Cootes' anger during the Second Victoria Trip.
153. Mr. Cootes stated that in hindsight, he wishes he had kept the friendly boundaries between him and Ms. Mio more defined. He recognizes that inviting Ms. Mio on the Victoria trips was not a good decision.

Credibility Issues

154. The Tribunal has applied the principle that the most helpful evidence is considered to be documents and materials created at the time of events, as these provide a more accurate depiction of what has occurred than recollections of those involved: *The Employee*, para. 46. Clear documentary evidence was available to clarify, corroborate or contradict the evidence of witnesses, the Tribunal relied on that documentary evidence. However, in many instances, the documentary evidence was either inconclusive or non-existent and the Tribunal relied on the oral testimony.

Kiana Mio

155. The Tribunal found that Ms. Mio was a credible witness.
156. Several times during her testimony, Ms. Mio became very emotional, and at one point indicated she could not carry on. The Tribunal accepts that this display of emotion was genuine and likely a result of or contributed to by the issues before the Tribunal in this application.
157. Ms. Mio failed to answer a number of questions on the basis of her statement that she could not recall because of PTSD. However, none of these instances of failure to recall related to substantial issues.

Trevor Cootes

158. On the other hand, the Tribunal found Mr. Cootes to be sorely lacking in credibility. Mr. Cootes admitted lying on numerous occasions, both in his dealings with Ms. Mio and substantially in his dealings with the investigators engaged to investigate Ms. Mio's complaints.
159. Mr. Cootes was evasive under cross-examination, to the point that he denied the obvious meaning of plain words that he had authored.
160. The Tribunal finds Mr. Cootes' evidence to be fundamentally self-serving, and untrustworthy without corroboration.

Rena Johnson

161. There are no credibility issues respecting the evidence of Rena Johnson. Her evidence was presented in a forthright and straightforward manner.
162. However, in recognizing of the objection of Respondent's counsel, that Ms. Johnson's evidence is substantially hearsay, the Tribunal gives little weight to her evidence, and notes that her evidence is not necessary to decide any of the issues before the Tribunal.

Documentary Evidence

163. The parties introduced a number of documents:
- a) Exhibit 1 – Kiana Mio letter of resignation from Economic Development Committee, November 24, 2016;
 - b) Exhibit 2 – text messages between Kiana Mio and Trevor Cootes, October 30, 2019 to June 9, 2021;
 - c) Exhibit 3 – text messages between Kiana Mio and Rachel, July 13, 2021 to July 17, 2021;
 - d) Exhibit 4 – text message respecting Interac E-Transfer to Kiana Mio, July 13, 2021 at 11:37 p.m.;
 - e) Exhibit 5 – email from Rena Johnson to Trevor Cootes, June 5, 2020;
 - f) Exhibit 6 – Visa statement and hotel invoices, October-November 2019;
 - g) Exhibit 7 – parties Joint Book of Documents:
 - i. 2015 Candidate Statements, May 29, 2015;
 - ii. Email from T. Cootes to M. Nookemus with attachment, July 15, 2017;
 - iii. Email exchange between K. Mio and C. Rayner, October 8, 2019;

- iv. Text messages between K. Mio and T. Cootes, June 5 – July14, 2021
 - v. Text message from K. Mio to George, July 13, 2021;
 - vi. Text messages between K. Mio and Rachel, July13-15, 2021;
 - vii. Medical record of Dr. C. Singh [with redactions], February 23, 2022;
 - viii. Public Complaint Investigation, April 7, 2022;
- h) Exhibit 8 – Trevor Cootes letter of recommendation for Kiana Mio, March 1, 2020.

FINDINGS OF FACT

164. The Tribunal has found that Mr. Cootes credibility was seriously deficient. Where there is conflict between the evidence of Mr. Cootes and Ms. Mio, the Tribunal has generally accepted Ms. Mio’s versions.

Nature of Relationship

165. On cross-examination, Mr. Cootes agreed that it was fair to describe his relationship with Ms. Mio as a “close friendship and mentorship”. The Tribunal finds that this is an appropriate description of their relationship, as understood as both Mr. Cootes and Ms. Mio.
166. Both parties described frequent casual interactions between 2015, when they met, and the culminating incident in their relationship in July 2021. This testimony was confirmed by the evidence of hundreds of text messages exchanged between the parties (Exhibit 7, Tab 4; Exhibit 2).
167. Ms. Mio testified that their interactions were always initiated by Mr. Cootes, however the evidence of text messages clarifies that on occasion, she initiated contact.
168. At numerous times in the course of the relationship between Mr. Cootes and Ms. Mio, he provided money to her (examples: Exhibit 7, Tab 4, pp. 6-9, 16).
169. The Tribunal finds that Ms. Mio frequently relied on Mr. Cootes for money when she was in difficult circumstances, and it was reasonable for her to believe that he would continue to provide money to her in future.

2015 Election

170. Both parties ran for positions on Council in the 2015 election. Mr. Cootes was elected, Ms. Mio was not.
171. During the course of the election campaign, the parties met and began a relationship which both agreed to be of friendship and mentorship, which was to continue for several years.

172. Ms. Mio testified that at one point in the campaign, Mr. Cootes drove her from Port Alberni to Anacla. Mr. Cootes denied this. However, the Tribunal finds that Ms. Mio's recollection is more likely correct.

Appointment to Economic Development Committee

173. Ms. Mio's evidence was that Mr. Cootes recommended that she join the Committee and that on the basis of his recommendation she filled out documents and was subsequently appointed.
174. Mr. Cootes attempted to diminish his role in Ms. Mio's appointment, pointing out that appointments are actually made by the Executive Council.
175. The Tribunal finds that in his capacity as Chair of the Committee, Mr. Cootes played a key role in Ms. Mio's appointment, and without his active support the appointment would likely not have been made.
176. Ms. Mio testified that she was on the Committee until 2017 or 2018, and left because she was "not in a good space, was drinking and using drugs, and could not fulfill her obligations." On cross-examination, it was established that Ms. Mio resigned from her position on November 24, 2016 (Exhibit 1).
177. Mr. Cootes testified that the reason for Ms. Mio resigning was that she had missed four meetings, contrary to the rules of eligibility for committee membership, and that he offered her advice that she should resign rather than have her position terminated. However, on cross-examination, it was established that she had missed two meetings, and been excused from two others.
178. The Tribunal finds that Ms. Mio willingly resigned from the Committee for the reasons she explained in her testimony.

Quebec Conference

179. The Tribunal accepts Ms. Mio's evidence that Mr. Cootes arranged for her to attend a conference to be held in Quebec respecting Indigenous business success (Mio Evidence-in-Chief, Exhibit 7, Tab 3). Ms. Mio and Mr. Cootes did not travel together, but it is common ground that they met one evening while at the conference. Ms. Mio and Mr. Cootes disagreed, however, on key points respecting that meeting. Despite Mr. Cootes' strong denial, the Tribunal accepts Ms. Mio's description of the evening.
180. The Tribunal accepts Ms. Mio's evidence that Mr. Cootes accompanied her to her room following drinks at the casino.
181. The Tribunal accepts Ms. Mio's evidence that they consumed drinks from the hotel mini bar in her room.

182. The Tribunal accepts Ms. Mio's evidence that at one point Mr. Cootes kissed her and that she pushed him away.
183. Mr. Cootes' credibility on these points is substantially diminished by a text message sent to him by Ms. Mio the following day: "I wonder why all the booze and pop we drank wasn't charged yet..." (Exhibit 2, p. 1). There is no credible explanation for this text other than it must refer to their joint use of her hotel mini bar.

Wall Centre Incidents

184. Mr. Cootes travelled to Vancouver in February 2020. He met with Ms. Mio at an HFN engagement session, at dinner at the Salmon n' Bannock restaurant, and at the Wall Centre hotel.
185. There is no dispute that they met at the engagement session, some difference in evidence as to how it happened that Ms. Mio attended the dinner, and vigorous difference of evidence as to what happened at the Wall Centre.
186. Respecting the dinner invitation, Ms. Mio testified that Mr. Cootes invited her, whereas Mr. Cootes testified that Ms. Mio requested an invitation, to which he acceded. Regardless, the Tribunal finds that Mr. Cootes facilitated Ms. Mio's attendance at the dinner.
187. The parties have vastly diverging accounts of what transpired at the Wall Centre hotel.
188. Ms. Mio claimed that she attended at Mr. Cootes' room at the Wall Centre on the evening of February 28, 2020, they used cocaine, but ran out, and then travelled together to Ladner where Mr. Cootes purchased more and then both returned to the room where Ms. Mio stayed for the night.
189. Mr. Cootes on the other hand, was adamant that Ms. Mio was not at the room and that she contacted him at 4:30 a.m. the following morning seeking a ride and that he later provided her with taxi money.
190. The Tribunal concludes that it is more likely than not that Ms. Mio came to Mr. Cootes' room the evening of February 28 and stayed overnight. However, the Tribunal finds that the evidence respecting the cocaine use and trip to Ladner is inconclusive and it is unnecessary to decide whether Mr. Cootes used or bought cocaine.

Employment at Anacla 2021

191. Ms. Mio testified that in April of 2021, Mr. Cootes "reached out" to her regarding an open position with the HGB.
192. On the contrary, Mr. Cootes testified that contact respecting employment was initiated by Ms. Mio, who was looking for opportunities to return to Anacla in April 2021 (Exhibit 7, Tab 8-G).

193. Mr. Cootes' recollection is substantiated by an email from Ms. Mio, dated April 23, 2021, seeking information about opportunities there would be to get to Anacla (Exhibit 7, Tab 8-G).
194. Subsequently, Mr. Cootes forwarded Ms. Mio's email to Sheila Charles and Patrick Schmidt of HGB. In his email to Mr. Schmidt, Mr. Cootes described Ms. Mio as "an amazing, strong Huu-ay-aht woman", and made other positive comments respecting Ms. Mio.
195. The Tribunal concludes that Mr. Cootes was instrumental in obtaining employment for Ms. Mio at Anacla with the HGB.

First Victoria Trip

196. In June 2021, Mr. Cootes invited Ms. Mio to accompany him on the First Victoria Trip. Ms. Mio's evidence was that Mr. Cootes communicated to her that this was to be a business trip and a "learning experience".
197. Mr. Cootes testified that the business purpose behind taking Ms. Mio with him was that her Tsawwassen connection would assist him to better associate with the Tsawwassen official with whom he was meeting.
198. The testimony of Ms. Mio, supported by text messages in evidence, was that Mr. Cootes instructed her not to tell anyone about their trip (Exhibit 7, Tab 4, pp. 9-10).
199. In text messages, sent prior to leaving on the trip, Mr. Cootes encouraged Ms. Mio to mislead her employers (Exhibit 7, Tab 4, pp. 9-10).
200. Mr. Cootes explanation for his request that Ms. Mio not tell others about the trip was limited to his concern that the subject matter of the meeting with the Tsawwassen official was confidential, not that he wanted to keep the trip a secret.
201. The Tribunal finds that, in fact, Mr. Cootes sought to keep the entire First Victoria Trip a secret.
202. Prior to the First Victoria Trip, Mr. Cootes arranged for Ms. Mio to stay at a motel in Port Alberni. Mr. Cootes paid for the motel personally.
203. In planning for the meeting, Mr. Cootes sent a text message to Ms. Mio saying "...I could get a two room if that worked for you". Mr. Cootes testified that by this he meant a suite with a bedroom and living room. Ms. Mio testified that she understood they would have two separate rooms.
204. On arrival in Victoria on June 16, 2021, Mr. Cootes checked into the hotel and at that time, according to Ms. Mio, she learned that there were not two separate hotel rooms, but rather a suite with a bedroom and a living room area, contrary to her expectations. Mr.

Cootes, on the other hand, testified that he had advised her of the situation in his use of the expression “a two room”.

205. Ms. Mio testified that she was concerned with the arrangement and asked Mr. Cootes which room she was taking. Mr. Cootes stated he did not recall any such conversation, but he agreed that if Ms. Mio recalled that, he was prepared to accept that it happened.
206. The Tribunal finds that Ms. Mio’s expectation that they would stay in separate rooms was reasonable, given the nature of their relationship and the ambiguity of the text message referring to a “two room”.
207. The evidence of the parties was consistent that they attended a lunch meeting with the official from Tsawwassen, and that they returned to Port Alberni the next day.

Second Victoria Trip

208. The evidence of Ms. Mio and Mr. Cootes differed sharply respecting the Second Victoria Trip.
209. The Tribunal finds, based on Mr. Cootes’ lack of credibility in his testimony, and the corroboration of Ms. Mio’s testimony provided by the limited documentary record, that Ms. Mio’s version is generally to be preferred.
210. Ms. Mio changed her evidence from what she had told the investigators in February 2022 (Investigation Report, Exhibit 7, Tab 8) in two respects. She testified that the Sexual Advances of which she complained took place on the first night of the Second Victoria Trip, July 13, rather than the second night, and that her statement to the investigators that she expected to attend business meetings was incorrect, but that she was aware that it was not a business trip.
211. Ms. Mio explained that her evidence changed on reviewing documents which clarified these matters. She stated that she was previously confused between the First and Second Victoria Trips.
212. The Tribunal notes that the change of evidence respecting the date of the incidents did not change the substance of the description of the incident, nor substantially change the narrative of the Second Victoria Trip. Further, Ms. Mio’s revised recollection that the trip was not a business trip is consistent with Mr. Cootes’ evidence and it is not material to the complaint.
213. The Tribunal accepts Ms. Mio’s explanation for her change in evidence.
214. Prior to leaving on the second Victoria trip, Ms. Mio advised Mr. Cootes “I only have 20 dollars lol I was going to ask if I should just stay home”, to which he replied “Totally fine, I got you...” (Exhibit 7, Tab 4, p. 23)

215. The Tribunal finds that Ms. Mio relied on Mr. Cootes to pay all of the expenses of the Victoria trip, that it was reasonable for her to do so, and that Mr. Cootes understood at the time that he had undertaken that obligation.
216. On July 12, 2021, Mr. Cootes picked up Ms. Mio in Bamfield and they drove to Victoria in his vehicle.
217. Ms. Mio testified that in a discussion with Mr. Cootes, he again told her it would be good not to tell others about the trip. Mr. Cootes denied this, however, the Tribunal accepts Ms. Mio's evidence in this regard.
218. Ms. Mio testified that when they arrived at the hotel in Victoria, Mr. Cootes checked in and Ms. Mio found that they had only one room booked, which had two beds and no separate spaces inside. She stated that she was "uncomfortable with it", but did not say anything to Mr. Cootes.
219. Ms. Mio testified that after checking in, they drank in the hotel room and sat on the patio, and then went to the Sticky Wicket bar, where they sat at a table and ordered drinks.
220. Ms. Mio stated that while at the bar she was "just having a realization about everything" and asked him "why am I here?". She testified that Mr. Cootes then reached over, touched her leg, and said "he was interested in moving the relationship forward" (the "Sexual Advances"). She stated she freaked out after that and asked Mr. Cootes if "he's been fucking grooming me this whole time", to which he said "yes" but then immediately clarified that that was not what he meant.
221. Ms. Mio testified that she felt that Sexual Advances were "disgusting" as Mr. Cootes was a member of the Executive Council whom she had trusted as a mentor.
222. Ms. Mio testified that after the Sexual Advances, she went to the bathroom in the Sticky Wicket and was visibly upset. She said that two girls she had not met before, whom she later learned were called Rachel and Shani (the "two girls"), approached her and asked if she was alright, after which she told them what had happened and went to their table. She said that Mr. Cootes did not meet the two girls that night.
223. Mr. Cootes testified that he did not make the Sexual Advances while at the Sticky Wicket. He recalls that Ms. Mio talked to a girl he had not seen before, and that Ms. Mio brought the girl to the table shared by her and Mr. Cootes briefly. He said that he and Ms. Mio paid cash for their respective drinks.
224. The Tribunal accepts that Ms. Mio's testimony in this regard is an accurate description of the events at the Sticky Wicket.
225. Ms. Mio testified that she and Mr. Cootes left the Sticky Wicket and went back to the hotel, where Mr. Cootes produced a bag of cocaine. She testified that she used almost all of the cocaine, and that Mr. Cootes was drunk. Mr. Cootes said that after leaving the

Sticky Wicket, he and Ms. Mio went back to the hotel and went to sleep. He said he did not do cocaine that evening nor did he see her do cocaine.

226. The Tribunal accepts Ms. Mio's evidence respecting the cocaine, but notes that there is no evidence that Mr. Cootes used cocaine at that time.
227. Ms. Mio testified that the following morning, July 13, she ordered breakfast for her and Mr. Cootes, as well as a six-pack of Corona beer that Mr. Cootes had requested for the kayaking trip planned for later that day. Mr. Cootes denied involvement in ordering the beer, and said that it was for Ms. Mio.
228. The Tribunal accepts Ms. Mio's evidence that the beer was for Mr. Cootes.
229. Later that day, they went on the planned kayaking trip. Ms. Mio testified that she was "just uncomfortable and trying to survive the weekend".
230. Ms. Mio testified that following the kayak trip, she and Mr. Cootes went to Darcy's Pub where they had appetizers and a drink, but did not stay long and went back to the hotel. Mr. Cootes said that they did not order drinks at Darcy's Pub. The Tribunal accepts Ms. Mio's evidence on this point, though it is not material to the complaint.
231. There is no dispute that later that evening, Ms. Mio and Mr. Cootes went out to the Irish Times Pub. The evidence differs as to what happened in the lead-up to and at the Irish Times. Ms. Mio testified that she and Mr. Cootes had planned to go to the Irish Times and she subsequently texted the girls from the previous night to join her and Mr. Cootes. On cross-examination, Ms. Mio admitted that she had not provided to the investigators a text exchange with one of the girls, Rachel, in which she told Rachel she was "so hung".
232. Mio said that while at the Irish Times, Mr. Cootes had at least three beers and she had "multiple Moscow mules" and it was her understanding that Mr. Cootes would be footing the bill due to his text before the Second Victoria Trip saying "I got you" and the fact that he had paid for everything during the Trip.
233. Mr. Cootes testified that Ms. Mio had told him during the kayak trip, that she planned to meet with the two girls at the Irish Times Pub that evening and asked if he would like to come. He thought that given, to his recollection, Ms. Mio had paid for her drinks the night before and she had independently made plans with the two girls, she would be covering her own bill at the Irish Times.
234. Ms. Mio testified that she and Mr. Cootes ordered prawns and another appetizer while they were at the Irish Times. When the two girls arrived, the group moved to a table. She said that she and the girls were back and forth between the table and the washroom, but not speaking to Mr. Cootes when at the table. She said that he was very angry and she and the girls came out of the washroom at one point to find that he had left without paying the bill and with two full beers that he had ordered still on the table.

235. Mr. Cootes testified that he ordered two beers while at the Irish Times. He said that no food was ordered by anyone. He said that when the two girls arrived, they and Ms. Mio were moving around frequently and that he talked to one of the two girls briefly. He said he was not planning on staying long in the first place, and that he paid cash for his beers and left shortly after the two girls arrived.
236. The tribunal accepts Ms. Mio's evidence in this regard.
237. Ms. Mio testified that after Mr. Cootes left, she could not leave the Irish Times because of the \$200 bar bill, but was able to text her friend George, who electronically transferred \$200 to her. Despite receiving a confirmation of the transfer, she testified that the money would not settle in her account. She said that the bartender was prepared to allow her to leave without paying if she left her ID. Upon agreeing to this and leaving, she received a notification that the money had settled in her account, which enabled her to return to the Irish Times and pay the bill. She then went out with her friends for a half hour at another restaurant before returning to the hotel.
238. Ms. Mio testified that on the following day, July 14, both she and Mr. Cootes got up early. She confronted Mr. Cootes about leaving her at the Irish Times without paying and "he flipped out", blaming her. They then got in the car and she said he was "driving 90km per hour through Victoria". He pulled over at a gas station and withdrew \$200 cash from an ATM, which he "threw in her purse". She stated she was "scared to say anything" on the trip back, as no one knew she was on the trip and they were outside of cell service. She said "he knew that".
239. Mr. Cootes testified that on July 14, Ms. Mio was upset with him but he was not initially upset with her. He said that they subsequently argued and admitted that he had a role to play in the argument. He stated they "raised our voices" and that Ms. Mio was the angrier one in the argument. He said she did not mention the Sexual Advances in the course of the argument. Mr. Cootes agreed that he stopped at a gas station and withdrew \$200 on the way back, but stated that he placed it on Ms. Mio's purse after she refused to take it. He said he was not speeding on the way back.
240. On the evening of July 14, after Ms. Mio was back in Bamfield, Mr. Cootes texted "hey, I'm really sorry I fucked up" (Exhibit 7, Tab 15, p. 24). Approximately one week later, he messaged on Instagram apologizing for walking out and not paying the bill, and expressing surprise that the bartender did not stop him. Mr. Cootes testified that he intended to apologize for the difficult situation Ms. Mio had to endure and not for his own actions during the evening of July 13.
241. The Tribunal accepts Ms. Mio's evidence respecting the events that occurred on the evening of July 13 at the Irish Times Pub, the events that occurred on July 14 before and during the trip back from Victoria, and the events that occurred after Ms. Mio returned to Bamfield.

Ms. Mio's Resignation

242. Ms. Mio testified that the day following their return to Bamfield from the second Victoria trip, she had a previously arranged engagement to pick up some friends in Victoria. She did that, and then sent a text message to Sarah Johnson, her supervisor at the HGB, stating that she was resigning from her position immediately to take a new job in the Yukon Territory.
243. Ms. Mio testified that she did not in fact have a new job in the Yukon Territory.
244. The Tribunal accepts Ms. Mio's evidence in this regard.

Impacts on Ms. Mio

245. The Tribunal accepts the evidence of Ms. Mio that the impact of the incident of the Second Victoria Trip was serious and detrimental to her wellbeing, and in particular, this incident occurred in the context of a relationship with a person whom she trusted and which she understood to be one of mentorship and friendship.
246. Ms. Mio testified that her feeling immediately after the sexual advance was that it was "disgusting". The Tribunal accepts Ms. Mio's evidence in this regard.
247. Three days after the sexual advance, Ms. Mio quit her job with HGB. She said she was disgusted and angry and did not want to be around anywhere she could see Mr. Cootes or anyone in the community. The Tribunal accepts Ms. Mio's evidence respecting her feelings and accepts that she quit her job as a consequence of the Sexual Advances.
248. Ms. Mio testified that, immediately following her resignation from the HGB, she went to the Yukon and stayed through the month of August 2021, where she engaged in self-destructive behaviour, taking various drugs and selling crack and cocaine. She said she recalled feeling like she had "a mission to die". The Tribunal accepts this evidence.
249. Ms. Mio did not share information about the Victoria trip with anyone else until December 2021, when she told her friend about the sexual advance. Her friend advised Ms. Mio to talk to the Chief Councillor, who in turn directed her to the HFN Executive Director.
250. Consequently, Ms. Mio sought counselling. In February 2022, she sought assistance from a doctor at a clinic at Langara College (Exhibit 7, Tab 7). In March and April 2022, she sought assistance from a cultural wellness worker with the HFN (Exhibit 7, Tab 12). In March 2022, she sought counselling from HFN clinical counsellor Rena Johnson, from whom she had previously sought counselling from November 2020—March 2021 (Exhibit 7, Tab 10). The Tribunal accepts that Ms. Mio's need to attend counselling was a consequence of, or contributed to by, the Sexual Advance.

LEGAL PRINCIPLES

251. The issues before this Tribunal are fundamentally ones of Huu-ay-aht law. Schedule A of the *Interpretation Act* defines “Huu-ay-aht law” as including “Huu-ay-aht acts, regulations, orders, written policies, customary laws, and common law in relation to those HUU-ay-aht acts, regulations, orders, written policies and customary laws”. The legal principles relevant to this case are therefore chiefly those contained in COCCIA, the Maa-nulth First Nations Final Agreement, and the *Interpretation Act*, HFNA 14/2011.
252. The Tribunal finds that the HUU-ay-aht law of sexual harassment corresponds with the Canadian law of sexual harassment. The Tribunal relies on Canadian statutes and common law to make determinations regarding the allegation of sexual harassment under section 12(3) of COCCIA.
253. The Tribunal finds that the HUU-ay-aht Oath embodies traditional HFN values and customary laws, and should be given its plain meaning.

Abuse of Power

254. The Code of Conduct and Conflict of Interest Act (COCCIA) states at section 12(2):

12 (2) Public officers must not ask for money or favours from another person in exchange for using their position to

(a) make or influence a decision of a HUU-ay-aht body, or

(b) expedite, deny or delay any service or program provided by a HUU-ay-aht body.

255. COCCIA states at section 12(4): “Public officers who contravene this section are disqualified from holding their position”.
256. “Money or favours” is defined at section 12(1) as including “any private interest, advantage or benefit for a public officer or any other person”.
257. In addition to its standalone definition, abuse of power is also a characteristic element of sexual harassment: *The Employee* at para. 144.

Sexual Harassment

258. COCCIA states at section 12(3): “Public officers must not intimidate, harass, assault, or sexually harass or assault anyone”. The term “sexually harass” is not defined in COCCIA.
259. COCCIA states at section 12(4): “Public officers who contravene this section are disqualified from holding their position”.
260. Both “harassment” and “sexual harassment” are defined in the CHRA:

Harassment

14 (1) It is a discriminatory practice,

(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(b) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

Sexual harassment

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

261. Section 13 of the British Columbia Human Rights Code, RSBC 1996, c. 210 also prohibits sexual harassment as a form of discrimination.
262. The leading case on the test for sexual harassment is *Janzen*, which sets out three criteria for establishing sexual harassment:
1. The conduct must be of a sexual nature;
 2. The conduct must be unwelcome; and
 3. The conduct must result in adverse consequences.
263. Regarding the first criterion that the conduct must be of a sexual nature, there are five factors that are relevant: *The Employee*, at para. 12: a. the egregiousness or virulence of the comment; b. the nature of the relationship between the involved parties; c. the context in which the comment was made; d. whether an apology was offered; and e. whether or not the recipient of the comment was a member of a group historically discriminated against. A single incident can suffice: *Eva obo Employees of Spruce Hill Resort and Spa Ltd. v. Spruce Hill Resort and Spa Ltd. and another*, 2018 BCHRT 238 (“*Spruce Hill Resort*”). In *Spruce Hill Resort*, whether a single incident sufficed to establish conduct of a sexual nature was found to be dependent on the context in which the conduct took place, including the geographical location, the social situation, the professional implications for the alleged victim, and the vulnerability of the alleged victim.
264. Regarding the second criterion that the conduct must be unwelcome, three misconceptions exist that may prejudicially signal that the alleged victim welcomed the conduct: (1) lack of protest, (2) non-reporting, and (3) participation in prior behaviour.

The trier of fact must not rely on these three misconceptions, or “gender myths”, in determining whether the conduct was unwelcome: *Basic*, at para. 104.

265. Regarding the third criterion that the conduct must result in adverse circumstances, the adverse circumstances are to be defined broadly as endangering continued employment, negatively affecting work performance, or undermining personal dignity: *Janzen*. The broad interpretation of the adverse circumstances is supported by a general broadening of the protection against sexual harassment and discrimination generally, in order to protect employees in their work regardless of who engages in the improper conduct: *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62.
266. The mere fact that the alleged victim of the sexual harassment is in a position of vulnerability can constitute an adverse circumstance: *The Employee; Friedmann v. Macgarvie*, 2012 BCCA 445, at para. 22. According to *The Employee*, at para. 91: “The key is whether that [sexual] harassment has ‘a detrimental effect on the complainant’s work environment’”.
267. The conduct constituting the alleged sexual harassment need not be the sole cause of the adverse consequence but must be at minimum a contributing factor to the adverse consequence: *Spruce Hill Resort*.

Failure to Fulfill the Huu-ay-aht Oath

268. COCCIA states at section 4(1):

4 (1) Public officers must do all of the following:

(a) fulfill the Huu-ay-aht oath...

269. COCCIA states at section 4(4): “Public officers who contravene this section may be disqualified from holding their position”.
270. COCCIA states at section 33:

33 Public officers must exercise their powers and duties

(a) in good faith and in compliance with the Huu-ay-aht oath...

271. The Oath is found in the Schedule to COCCIA and states:

I, _____, do solemnly affirm (or swear)
that:

I will act in the best interests of present and future generations of Huu-ay-aht citizens,

I will honour the vision, values, and sacred principles of Huu-ay-aht –

Uu-a-thluck (taking care of future generations), and

Hish-uk-tsawak (everything is one),

I will be a positive role model, following the principle of **ii-saak** (conducting myself honestly and respectfully), and

I will uphold the Constitution and obey HUU-ay-aht laws.

272. The terms in the Oath, including the HUU-ay-aht principles of “*uu-a-thluck*” (taking care of future generations), “*hish-uk-tsawak*” (everything is one), and “*ii-saak*” (conducting myself honestly and respectfully), must be given their plain meaning in this context.

THE PARTIES’ ARGUMENTS

273. The parties largely agreed on the applicable law, but disagreed on the application of the law to the facts. The differences in the parties’ application of the law to the facts was due to their contrasting views of witness credibility.

Applicant

274. Counsel for the Applicant argued that Mr. Cootes’ evidence was unreliable due to his frequent and admitted recourse to lies and equivocation, demonstrated both during the course of the investigation and during the course of the Tribunal hearing.
275. Counsel for the Applicant raised numerous authorities on the test for sexual assault, including the Canadian Human Rights Act, R.S.C., 1985 c. H-6 (the “CHRA”) and the Supreme Court of Canada’s case of *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252 (“*Janzen*”). It also cited *Basic v. Esquimalt Denture Clinic and another*, 2020 BCHRT 138 (“*Basic*”), which states that the trier of fact in a sexual harassment case should not have recourse to gender-based myths. The Applicant argued that the test for sexual harassment was made out on the facts and that a breach of section 12(3) of the Act should be found.
276. The Applicant argued that because the abuse of power is a characteristic element of sexual harassment, a breach of section 12(2) of the Act should be found.
277. Citing Mr. Cootes’ admission that he dishonestly during his interactions with Ms. Mio and during the investigation process breached the Oath, Counsel for the Applicant submitted that a breach of sections 4(1)(a) and 33(a) of the Act should be found.

Respondent

278. Counsel for the Respondent argued that Ms. Mio’s evidence was unreliable due to the changes in her recollection of key dates between the Investigation Report and her testimony. The Respondent argued that Ms. Mio’s admitted significant use of substances before or during key events go to the reliability of her evidence on those occasions.

279. The submissions of Counsel for the Respondent concerning authority largely accorded with those of Counsel for the Applicant, including agreement as to the applicability of *Janzen* and *Basic*. However, they differed where Counsel for the Respondent likened the instant case to the British Columbia Human Rights Tribunal’s case of *The Employee v. The University and Another (No. 2)*, 2020 BCHRT 12 (“*The Employee*”), in which the test for sexual assault formulated in *Janzen* was cited with approval but no sexual harassment was made out. Based on this authority, Counsel for the Respondent argued that no breach of section 12(3) of the Act should be found.
280. Counsel for the Respondent argued strenuously that the process before the Tribunal was unfair to the Respondent. The Respondent argued that the original investigation conducted in February 2022 was unfair because the Respondent had not been provided access to all of the evidence in front of the investigators, and again, that the proceeding before the Tribunal was unfair because of failure on the part of the Applicant to make timely disclosure of evidence sought by the Respondent.
281. Counsel for the Respondent argued that abuse of power and sexual harassment are linked and that in the event that the Tribunal concluded that sexual harassment had occurred pursuant to section 12(3), that no independent breach of section 12(2) of the Act should be found.
282. Counsel for the Respondent argued that no breach of sections 4(1)(a) and 33(a) should be found.

ANALYSIS

Sexual Harassment

283. As noted, the parties were substantially in agreement with the law respecting sexual harassment. There was substantial disagreement about the application of that law to the facts. The Tribunal has determined the facts, as set out above, and largely accepts the evidence of Ms. Mio. This being the case, it is a straightforward matter to conclude that the criteria established in *Janzen* have been met:
- (a) The Tribunal has concluded that the conduct of Mr. Cootes was sexual in nature, taking account of the factors from *The Employee*. The comment was romantically suggestive, no apology was offered, and at the time the comment was made Ms. Mio was in a vulnerable position, financially reliant on Mr. Cootes, and in a city in which she had few connections.
 - (b) The Tribunal has concluded that the conduct was unwelcome, given Ms. Mio’s evidence that she found it “disgusting” and taking account of the three gender myths.
 - (c) The Tribunal has concluded that the conduct was a significant factor in causing adverse consequences to Ms. Mio, including departure from employment.

Abuse of Power

284. The Tribunal has concluded that insofar as the Respondent abused his power, that abuse was related to and is in respect of COCCIA, s. 12(3).

Breach of Oath

285. The Tribunal has concluded that the Huu-ay-aht Oath speaks for itself, in plain language and reference to traditional Huu-ay-aht principles.
286. Given the findings of the Tribunal respecting Mr. Cootes conduct, the Tribunal has no difficulty in concluding that he failed to be “a positive role model”, failed to conduct himself “honestly and respectfully”, and failed to uphold Huu-ay-aht laws.

Unfairness

287. Counsel for the Respondent argued strenuously that the process was unfair to Mr. Cootes. She particularly objected to the non-disclosure of documents.
288. While the Tribunal acknowledges that there are a number of documents which were not disclosed until the hearing was in progress, those documents were not material to the issues and the Respondent was not prejudiced by the late disclosure.

CONCLUSIONS

289. The Applicant, Executive Director Connie Waddell, seeks finding that the Respondent, Trevor Cootes, breached three sections of the *Code of Conduct and Conflict of Interest Act* (COCCIA).
290. The findings of the Tribunal are as follows:

Abuse of Power Contrary to COCCIA, s. 12(2)

291. The Tribunal concludes that the Respondent, Trevor Cootes did not breach COCCIA, s. 12(2). Insofar as the Respondent abused his power, that abuse was related to and is in respect of COCCIA s. 12(3).

Sexual Harassment Contrary to COCCIA, s. 12(3)

292. The Tribunal concludes that the Respondent, Trevor Cootes, engaged in sexual harassment of Kiana Mio, contrary to COCCIA, s. 12(3).

Failure to Fulfill the Huu-ay-aht Oath

293. The Tribunal concludes that the Respondent, Trevor Cootes, failed to fulfill the Huu-ay-aht Oath, contrary to COCCIA, s. 4(1)(a) and 33(a), in respect of his dealings with Kiana Mio.

DISPOSITION

Considerations Respecting Disposition

294. The Tribunal has considered a number of factors in determining the appropriate disposition of the Application.
295. The Tribunal considers the sexual harassment of Ms. Mio to be serious, given the relationship of friendship and mentorship, and the trust placed by Ms. Mio in Mr. Cootes over the period of several years.
296. The Tribunal notes that Mr. Cootes has not accepted responsibility for his conduct and has failed to apologize or exhibit remorse, but instead has continued to deny any fault in his conduct.
297. The Tribunal notes that the sexual harassment had a serious impact on Ms. Mio. She was devastated by the harassment which occurred after years of trust in a relationship she understood to be one of friendship and mentorship.
298. Sanctions against Mr. Cootes must reflect a strong condemnation of his conduct found by the Tribunal.
299. Sanctions against Mr. Cootes must act as a deterrent to others in the community.

Breach of Oath

300. Complying with the HUU-AY-AHT Oath is a fundamental requirement of all public officers in the HUU-AY-AHT Government.
301. The Tribunal finds that the breach of Oath is an extremely serious matter, which should be condemned in the strongest terms.

Decision on Disposition

302. In our opinion, having regard to the breaches of the HUU-AY-AHT Oath committed by Mr. Cootes, it is appropriate that he be disqualified from holding his position as Councillor, pursuant to COCCIA, s. 4(4), and further that he pay a fine in the amount of \$2,000.00, and we so order.
303. In our opinion, the Respondent, Trevor Cootes, has breached s.12(3) of COCCIA, and is consequently disqualified from holding his position as HUU-AY-AHT Councillor pursuant to COCCIA, s. 12(4), and we so order.
304. Pursuant to COCCIA, s. 27, the Tribunal declares that the disqualification of Mr. Cootes takes effect immediately and his former position as Councillor on the HFN Executive Council is vacant.

305. Given the Tribunal's decision disqualifying Mr. Cootes, he is also disqualified pursuant to COCCIA, s. 23(2), from holding any position as a public officer.
306. In our opinion, pursuant to COCCIA, s. 27(1)(e), it is appropriate that the Respondent, Mr. Cootes, is prohibited from holding position as a public officer for a period of five years, and we so order.

Orders

307. The Tribunal orders that:
- (a) Mr. Cootes is disqualified immediately from holding his position as Councillor.
 - (b) Within 30 days of the date of this decision, Mr. Cootes pay a fine in the amount of \$2,000.00 to the Huu-ay-aht Government.
 - (c) The Tribunal declares Mr. Cootes' former position as Councillor to be vacant.
 - (d) Mr. Cootes is prohibited from holding a position as a public officer for a period of five years from the date of this decision.



John Rich
Tribunal Chair

"I agree."

Peter Colenbrander
Tribunal Member

"I agree."

Andrea Pettigrew
Tribunal Member